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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,575	11/01/2001	Antonio Carlos Ribeiro Carvalho	J&J-2045	2649

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT PAPER NUMBER

3761

DATE MAILED: 09/17/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/040,575

Applicant(s)

CARVALHO ET AL.

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Objections

Claims 10 and 11 are objected to because of the following informalities: Claims 10 and 11 refer, in lines 4 and 3, respectively, to bending lines. Previously, bending axes were disclosed. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-11 and 13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The flaps being coextensive with the lateral center line of the sanitary napkin is not described in the specification nor shown in the figures. For the flaps to be coextensive with the lateral center line of the sanitary napkin, the flaps would have to occupy the same space and have the same physical boundaries as the lateral center line. The flaps are shown in the figures as being located outward of the lateral center line of the sanitary napkin. The flaps being coextensive with the lateral center line is therefore considered new matter.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 4, and 10-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Sturino (5,713,886).

With respect to Claim 1: Sturino discloses the use of an absorbent article (10) with a topsheet (14), backsheet (16) and core (12) located there between. Sturino discloses flaps (26,28,30) extending outward from the side edges and two bending axes (dotted lines located in the front distal end 20), which converge towards the longitudinal centerline (See Figure 1).

With respect to Claim 4: Sturino discloses the width as the smallest part in the first distal end to be 29mm (column 2, line 38).

With respect to Claims 10-14: Sturino discloses the central absorbent pad (L2) is folded along bending axes to form a tapered shape, the side edges being capable of being folded over an edge of the wearer's undergarment in use (column 3, lines 14-16).

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Claims 1-3 and 10-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Molas (US2002/0078618 A1).

With respect to Claims 1-3: Molas discloses the use of a sanitary napkin (1) with a topsheet, backsheet and core located there between (page 2, paragraph 0022). Molas discloses flaps (4,5) extending outward of the side edge (Figures 1 and 2) and two bending axis (2) which are embossed lines (page 3, paragraph 0033), which are located inward of the side edge and converge towards the longitudinal centerline from the front through the transverse centerline and to the rear (See Figure 1).

With respect to Claims 10-14: See Page 3, paragraph 0033.

Claims 1-3, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Widlund et al. (5,931,162).

With respect to Claims 1-3: Widlund discloses the use of an absorbent article which as a sanitary napkin (see abstract) with a topsheet (1), backsheet (2) and core (3) located there between. Widlund discloses the use of flaps (6) extending outward of the side edge (See Figure 6) and bending axes (22, 23) located within the side edge and converge towards the longitudinal centerline, from the front through the transverse centerline and to the rear (see Figures 6-8).

With respect to Claim 6: See Figures 6-8.

Claim Rejections - 35 USC § 103

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sturino (5,713,886).

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Sturino discloses the width of the first distal end to be less than 30mm, but fails to disclose the width in the first distal end to be between 15 and 20mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the width in the first distal end be 15-20mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Widlund et al. (5,391,162).

Widlund, as disclosed above for Claims 1 and 6) has side margins which wrap around the garment (figures 6-8), and the side margins obviously have a width, however Widlund is silent as to what that width is, and therefore does not disclose the width of the side margin being at least 7mm or further 10-20mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the side margin have a width of greater than 7mm or between 10-20mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Response to Amendment

The amendment filed 09 July 2003 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The flaps being

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coextensive with the lateral center line of the sanitary napkin is not described in the specification nor shown in the figures.

Applicant is required to cancel the new matter in the reply to this Office Action.

Response to Arguments

Applicant's arguments with respect to Sturino have been fully considered but they are not persuasive. Due to the indefinite nature of the limitation defining the flaps as coextensive with the lateral centerline, as discussed in the rejection under 37 U.S.C. 112, first paragraph above, it is the position of the examiner that Sturino discloses all claimed limitations.

Applicant's arguments with respect to the rejection of claim 6 as anticipated by Molas have been fully considered and are persuasive. The rejection of claim 6 as anticipated by Molas has been withdrawn.

Applicant's arguments with respect to Widlund have been fully considered but they are not persuasive. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the bending axes being located inward of the absorbent core, and the absorbent core being folded) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Widlund shows, in figure 7, bending axes located inward of the central absorbent pad, and the central absorbent pad being folded. The central absorbent pad

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extends beyond merely the absorbent core, as shown in figure 1 of the instant specification. Widlund therefore discloses all aspects of the claimed invention.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

CWA

cla

September 12, 2003



WEILUN LO

SUPERVISORY PATENT EXAMINER
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